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10 Attorneys for Plaintiff,  
Scotti Taylor  
11  
12

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA  
15

16 Scotti Taylor,

17 Plaintiff,

18 vs.  
19

20 Performance Asset Recovery; and DOES  
21 1-10, inclusive,

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No.: '13CV0370 IEG WMC

**COMPLAINT FOR DAMAGES**  
**1. VIOLATION OF FAIR DEBT**  
**COLLECTION PRACTICES ACT,**  
**15 U.S.C. § 1692 ET. SEQ;**  
**2. VIOLATION OF FAIR DEBT**  
**COLLECTION PRATICES ACT,**  
**CAL.CIV.CODE § 1788 ET. SEQ.**

**JURY TRIAL DEMANDED**

1 For this Complaint, the Plaintiff, Scotti Taylor, by undersigned counsel, states  
2 as follows:  
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt  
6 Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the invasions of  
7 Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to  
8 collect a consumer debt.  
9

10 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.  
11

12 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that  
13 Defendants transact business here and a substantial portion of the acts giving rise to  
14 this action occurred here.  
15

16 **PARTIES**

17 4. The Plaintiff, Scotti Taylor (hereafter "Plaintiff"), is an adult individual  
18 residing in Oceanside, California, and is a "consumer" as the term is defined by 15  
19 U.S.C. § 1692a(3).  
20

21 5. The Defendant, Performance Asset Recovery (hereafter "Performance"),  
22 is a company with an address of 29910 Ohana Circle, Lake Elsinore, California  
23 92532, operating as a collection agency, and is a "debt collector" as the term is  
24 defined by 15 U.S.C. § 1692a(6).  
25  
26  
27  
28

1           6. Does 1-10 (the “Collectors”) are individual collectors employed by  
2 Performance and whose identities are currently unknown to the Plaintiff. One or more  
3 of the Collectors may be joined as parties once their identities are disclosed through  
4 discovery.  
5

6           7. Performance at all times acted by and through one or more of the  
7 Collectors.  
8

9                           **ALLEGATIONS APPLICABLE TO ALL COUNTS**

10          **A. The Debt**

11           8. The Plaintiff allegedly incurred a financial obligation (the “Debt”) to  
12 Bally Total Fitness (the “Creditor”).  
13

14           9. The Debt arose from services provided by the Creditor which were  
15 primarily for family, personal or household purposes and which meets the definition  
16 of a “debt” under 15 U.S.C. § 1692a(5).  
17

18           10. The Debt was purchased, assigned or transferred to Performance for  
19 collection, or Performance was employed by the Creditor to collect the Debt.  
20

21           11. The Defendants attempted to collect the Debt and, as such, engaged in  
22 “communications” as defined in 15 U.S.C. § 1692a(2).  
23

24          **B. Performance Engages in Harassment and Abusive Tactics**

25           12. Within the last year, Performance contacted Plaintiff in an attempt to  
26 collect the Debt.  
27  
28

1           13. The Debt is past California statute of limitations.

2           14. Performance failed to advise Plaintiff that the Debt was past the statute of  
3 limitations and was no longer legally enforceable, and instead threatened to file a legal  
4 action against Plaintiff if the Debt was not paid immediately.  
5

6           15. Performance had no ability to file a legal action against Plaintiff since the  
7 Debt is past the statute of limitations and as such its statements were misleading and  
8 false.  
9

10           16. Performance called Plaintiff's grandmother on multiple occasions in an  
11 attempt to collect the Debt.  
12

13           17. Performance contacted Plaintiff's grandmother after speaking with  
14 Plaintiff and after knowing her location information, and contacted the grandmother  
15 for purposes other than to obtain Plaintiff's contact information.  
16

17           18. During a conversation with Plaintiff's grandmother, Performance stated  
18 that Plaintiff would be arrested if the Debt was not paid immediately.  
19

20           19. During most conversations with Plaintiff, Performance failed to identify  
21 itself and failed to inform Plaintiff that the call was an attempt to collect the Debt and  
22 all information obtained would be used for that purpose.  
23

24           20. Performance failed to advise Plaintiff of her rights in writing as it is  
25 required by law.  
26  
27  
28

**COUNT I**  
**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**  
**15 U.S.C. § 1692, et seq.**

21. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

22. The Defendants communicated with individuals other than the Plaintiff, the Plaintiff's attorney, or a credit bureau, in violation of 15 U.S.C. § 1692c(b).

23. Defendants engaged in behavior the natural consequence of which was to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d.

24. The Defendants placed calls to the Plaintiff without disclosing the identity of the debt collection agency, in violation of 15 U.S.C. § 1692d(6).

25. Defendants used false, deceptive, or misleading representation or means to collect the debt, in violation of 15 U.S.C. § 1692e.

26. The Defendants misrepresented the character and legal status of the debt, in violation of 15 U.S.C. § 1692e(2).

27. The Defendants threatened the Plaintiff with imprisonment if the debt was not paid, in violation of 15 U.S.C. § 1692e(4).

28. The Defendants threatened to take action without legal ability to do so or without actually intending to do so, in violation of 15 U.S.C. § 1692e(5).

31. Defendants used an unfair and unconscionable means to collect the debt,  
in violation of 15 U.S.C. § 1692f.

33. The foregoing acts and omissions of the Defendants constitute numerous  
and multiple violations of the FDCPA, including every one of the above-cited  
provisions.

20 COUNT II  
21 VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION  
PRACTICES ACT, Cal. Civ. Code § 1788 et seq.

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26

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1           36. The Rosenthal Fair Debt Collection Practices Act, California Civil Code  
2 section 1788 et seq. (“Rosenthal Act”) prohibits unfair and deceptive acts and  
3 practices in the collection of consumer debts.  
4

5           37. Performance Asset Recovery, in the regular course of business, engages  
6 in debt collection and is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).  
7

8           38. The Defendants threatened the Plaintiff with arrest if the debt was not  
9 paid, in violation of Cal. Civ. Code § 1788.10(e).  
10

11           39. The Defendants did not disclose the identity of the debt collection agency  
12 when communicating with the Plaintiff, in violation of Cal. Civ. Code § 1788.11(b).  
13

14           40. The Defendants failed to comply with the provisions of 15 U.S.C. §  
15 1692, et seq., in violation of Cal. Civ. Code § 1788.13(e).  
16

17           41. The Defendants communicated information about the debt to the  
18 Plaintiff’s extended family, without the intent of confirming the Plaintiff’s location  
19 and without consent from the Plaintiff or the Plaintiff’s attorney, in violation of Cal.  
20 Civ. Code § 1788.12(b).  
21

22           42. The Defendants falsely represented that a legal proceeding had been or  
23 was about to be instituted unless the debt was paid immediately, in violation of Cal.  
24 Civ. Code § 1788.13(j).  
25

26           43. The Defendants did not comply with the provisions of Title 15, Section  
27 1692 of the United States Code, in violation of Cal. Civ. Code § 1788.17.  
28

44. The Plaintiff is entitled to damages as a result of the Defendants' violations.

## PRAAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the Defendants;

B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against the Defendants;

C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendants;

D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);

E. Statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to Cal. Civ. Code § 1788.30(b);

F. Actual damages from the Defendants for the all damages including emotional distress suffered as a result of the intentional, reckless, and/or negligent FDCPA violations and intentional, reckless, and/or negligent invasions of privacy in an amount to be determined at trial for the Plaintiff;

G. Punitive damages; and



1 H. Such other and further relief as may be just and proper.  
2

3 **TRIAL BY JURY DEMANDED ON ALL COUNTS**  
4

5  
6 DATED: February 15, 2013

7 By: /s/ Tammy Hussin  
8 Tammy Hussin, Esq.  
9 Lemberg & Associates, LLC  
10 Attorney for Plaintiff, Scotti Taylor  
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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Scotti Taylor

(b) County of Residence of First Listed Plaintiff County of San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Tammy Hussin, 6404 Merlin Drive, Carlsbad, CA 92011  
855-301-2300 X 5514; of Counsel to: Lemberg & Associates, 1100  
Summer St 3rd Fl Stamford CT 06905 2036532250

**DEFENDANTS**

Performance Asset Recovery

County of Residence of First Listed Defendant County of Riverside  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'13CV0370 IEG WMC****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input checked="" type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. 1692

Brief description of cause:  
Violations of the Fair Debt Collection Practices Act

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**  
500,000.00

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

02/15/2013

/s/ Tammy Hussin

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_